

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4876 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
Nos. 1 & 2 Yes. Nos. 3 to 5 No.

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JAGDISHBHAI AMRUTBHAI PATEL

Versus

DIVISIONAL CONTROLLER

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Appearance:

MR JV JAPEE for Petitioner

MR HS MUNSHAW for Respondents.

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 10/09/97

ORAL JUDGEMENT

Through this petition the petitioner seeks to challenge the denial of the consideration of petitioner's application for appointment on compassionate ground.

The petitioner's father was serving as Mechanic under the respondent corporation and while being in service he expired on 27.1.1991. The petitioner has come

with the case that his mother had informed the respondents vide letter dated 20.7.1991 that the case of the petitioner may be considered for appointment on compassionate ground on his attaining majority. The petitioner passed the new S.S.C.Examination in March,1993 and moved an application for appointment on compassionate ground on 27.9.1993. The petitioner is born of 24.11.1973 and he attained the majority on 24.11.1991. On receipt of the petitioner's application dated 27.9.1993, the respondent corporation called for additional details from the petitioner vide their letter dated 22.12.1993, and thereafter his application was filed on 8.3.1994 by the Corporation on the ground that at the time of the death of the petitioner's father, the petitioner was major and he has applied after two years. The petitioner made further representation and the Corporation sent reply dated 14.2.1995 stating therein that at the time of petitioner's father's death he was of 17 years 2 months and 3 days and had he moved application at that time, same could be considered but the petitioner has filed the application after the expiry of the limit of one year from the date of attaining majority and the same could not be entertained in view of the procedure adopted for the purpose of the Corporation. The petitioner made further representation on 15.7.1996 and the Corporation has sent reply dated 19.2.1997 reiterating their earlier stand and specifically it is mentioned that the petitioner has filed application after a period of 10 months and 3 days from the date of his attaining majority and therefore, it could not be entertained according to the Rules and Regulations of the Corporation for the purpose. In the affidavit-in-reply dated 26.8.1997 filed on behalf of the Corporation, the fact as alleged by the petitioner that his mother had informed the respondent corporation vide her letter dated 20.7.1991 to consider petitioner's case when he attains the majority was not denied. However, on 8.9.1997 time was granted to the petitioner if he has any acknowledgment due receipt in token of the fact that such an application had been received by the Corporation, and also to the Corporation to come out with the definite case as to whether such application had been received by the Corporation or not. The petitioner has today stated that no such acknowledgment due receipt is available with the petitioner and the Corporation has now denied the receipt of such an application and an affidavit dated 10.9.1997 to this effect has been filed. In such circumstances, the question as to whether the petitioner's mother had in fact sent the application on 20.7.1991 or not cannot be gone into in these proceedings.

The only question therefore remains to be considered is as to whether the petitioner's application for appointment on compassionate ground has been rightly discarded by the Corporation on the ground that the petitioner's application dated 27.9.1993 was barred by time because the petitioner had attained the majority on 24.11.1991 and he failed to file the application on or before 24.11.1992 and moved this application after a period of more than ten months i.e. in September, 1993. The learned counsel for the Corporation Mr. H. S. Munshaw has submitted that such appointments are to be given in accordance with the rules and regulations and the procedure prescribed by the Corporation and according to such procedure evolved by the Corporation itself the application has to be made by the dependent of the deceased employee within one year from the date he attains majority. He has also submitted that the applications have to be processed and dealt with in accordance with the procedure evolved by the Corporation itself. Mr. Munshaw has placed strong reliance on the following decisions of the Supreme Court.

(1) 1996(C)JT Pg. 7.

The State of Bihar & Others Vs. Samsuz Zoha etc.

(2) AIR 1997 (SC) Jan Pg. 123.

Bharmappa Nemanna Kawale & Another Vs. Dhondi  
Bhima Patil & Others.

(3) 1994 (SCC) (2) Pg. 718.

Life Insurance Corporation of India Vs. Asha  
Ramchandra Ambekar (Mrs) & Another.

(4) AIR 1996 SCW Pg. 2727.

Himachal Road Transport Corporation Vs. Dinesh  
Kumar with Himachal Road Transport Corporation  
Vs. Ms. Pravin Kumari.

(5) AIR 1994 SCW Pg. 1947.

Life Insurance Corporation of India Vs. Mrs. Asha  
Ramchandra Ambekar and Another.

(6) AIR 1994 SCW Pg. 2305.

Umesh Kumar Nagpal Vs. State of Haryana and  
others.

(7) AIR 1994 SCW Pg. 2539.

State of Haryana Vs. Naresh Kumar Bali.

While there cannot be any quarrel with the proposition laid down in any of these cases and in normal course the procedure may be followed nor the Court is supposed to be moved in such cases by any sympathetic consideration as has been held it cannot be lost sight of that rules, regulations, procedure and guidelines to which the applications are to be dealt with are not the statutory rules having force of law. Even in those cases where any limitation is prescribed by law, in appropriate cases the delay is condoned and in appropriate cases the matters are entertained. Therefore, following of the procedure is alright but no hard and fast rule of universal application with regard to the time limit of one year can be laid down or adhered to. Here is a case in which the petitioner who was in fact minor at the time of his father's death attained majority in November, 1991 and at that time he was student of S.S.C. He has passed S.S.C.Examination in March 1993 and has thereafter moved the application in September, 1993. In such circumstances, when the petitioner was studying S.S.C. and was in fact a student, if he wanted to move the formal application after passing of his S.S.C.Examination and in fact he moved application in September, 1993 itself, the Corporation cannot be said to be justified in throwing away the petitioner's application and refusing to entertain the same merely on the ground that the application was moved by the petitioner after expiry of one year after attaining majority. It is not the question of taking sympathetic view, it is the question in which the appointment to be given on compassionate ground is to be considered with compassion. The compassion in such cases is the very essence by which the scheme of giving appointment has been introduced and if such cases are rejected with a computer-machine application, oblivious of an orientation of compassion, the whole purpose of introducing such scheme would stand thwarted and defeated. Therefore this Court being fully conscious with the proposition of law laid down in this regard by the Supreme Court that the procedure must be followed and Court should not be swayed by sympathy, I find that the time limit of one year cannot be applied with that rigour to put an end to the consideration for appointment on compassionate ground in every case in which a ward of deceased employee fails to move application within time limit of one year fixed as a part and parcel of the procedure evolved by the employer not under any statutory rules but merely by way of executive instructions. Even when there are provisions of law consideration is made as to whether the provision is mandatory or directory. Here is a case in which there is no statutory rule, what to talk of mandatory or directory

rule, and therefore, such a time limit fixed as a part of the procedure through executive instructions adopted by the Corporation cannot be a fate accompli for all times to come against the ward of deceased employee who seeks appointment on compassionate ground at the very threshold of his career immediately after passing S.S.C. Examination and the fact remains that at the time when he attained majority, he was a student. The decision of the Corporation to outrightly reject the petitioner's application seeking appointment on compassionate grounds in the facts of the present case cannot be held to be justified. A pointed reference in this regard is made to circular No.1275 by the Corporation in which it has been mentioned at page no.2 of the circular that in case dependent of the deceased employee is minor at the time of the death and thereafter he attains majority within the period of ten years, he must move application within a period of one year of his attaining the majority. Thus, in a given case the Corporation may wait for a period of ten years for such minor ward to attain majority. Now, here is a case in which the petitioner has become major in 1991 itself i.e. very year in which his father had expired, he has moved application within a period of three years from the date of the death of his father but after a period of one year and ten months from the date he attained majority. If such mentions made in the executive circular are applied like a mandatory rule, it would certainly lead to discriminatory results inasmuch as a minor in one case may move application within 11 years of the death of his father and in another case a person may be deprived of the consideration of his application even if he moved the application within three years from the date of death of his father merely because he did not apply within one year from the date of attaining majority. A person who is desirous of employment on compassionate ground has also to take care of his educational career if he is studying and pursuing particular course of study at a given point of time. On his attaining majority, he is not supposed to give up his educational career in the midstream for seeking employment on compassionate ground and the delay of some period so as to qualify an examination for which he is pursuing a course should not lead to the rejection of his application seeking appointment on compassionate ground. In the present case the petitioner had moved the application in September, 1993. If at all this application was to be rejected on the ground that the application had been made after a period of one year and ten months from the date of attaining majority, the Corporation should have straight way rejected that application in the year 1993 itself. The Corporation had

also called for additional details from the petitioner vide their letter dated 22.12.1993 which too were supplied by the petitioner. It is not the case of the Corporation that at the time when the communication dated 22.12.1993 was sent to the petitioner, the petitioner corporation did not know the petitioner's date of birth because in the application dated 27.9.1993 the petitioner had given out his date of birth as 24.11.1973 and it was very well known to the Corporation on 22.12.1993 that the petitioner had attained the majority way back in 1991.

In my considered opinion, therefore, rejection of the application for appointment on compassionate ground on such a technical ground of no consequence cannot be held to be justified, keeping in view the spirit with which the scheme for appointment on compassionate ground has been introduced and the action of the respondent corporation in rejecting the petitioner's application solely on the ground that the application had been moved after one year and ten months from the date of his attaining majority, is wholly unjustified and irrational and the same thing can be said about the mention to this effect made in the circular and if this condition as mentioned in the circular issued by the Corporation is applied rigourously, it would lead to anomalous situation of disparity and discrimination as pointed out above. Such procedures and circulars are made to give effect to the scheme and not to defeat the object of the scheme and even if there are self imposed conditions, such conditions are to be applied with open mind keeping in view the facts of each case. In such cases, the procedure has to be subservient to the laudable idea and object with which the scheme is introduced and such procedure has to give way to the object which is cherished and sought to be achieved.

Upshot of the aforesaid discussions is that this Special Civil Application succeeds. The respondent corporation is directed to consider the petitioner's application dated 27.9.1993 and the application cannot be rejected on the sole ground that it has been moved after a period of one year and ten months from the date on which the petitioner attained majority and in case the petitioner is otherwise entitled for such an appointment on compassionate ground, the same should not be denied to him on this ground alone. The petitioner's application dated 27.9.1993 may be considered on merits and the respondent corporation may pass appropriate orders thereon within a period of two months from the date the certified copy of this order is served upon the corporation. Rule is made absolute in the terms as aforesaid. No order as to costs.

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m.m.bhatt